IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

Office - Supreme Court,
FILED
JUL 21 1953
HAROLD B. WILLEY, C

No. 192

WILLIAM H. BANKS WAREHOUSES, INC. AND JOHN ALFRED HALFORD,

Petitioners,

vs.

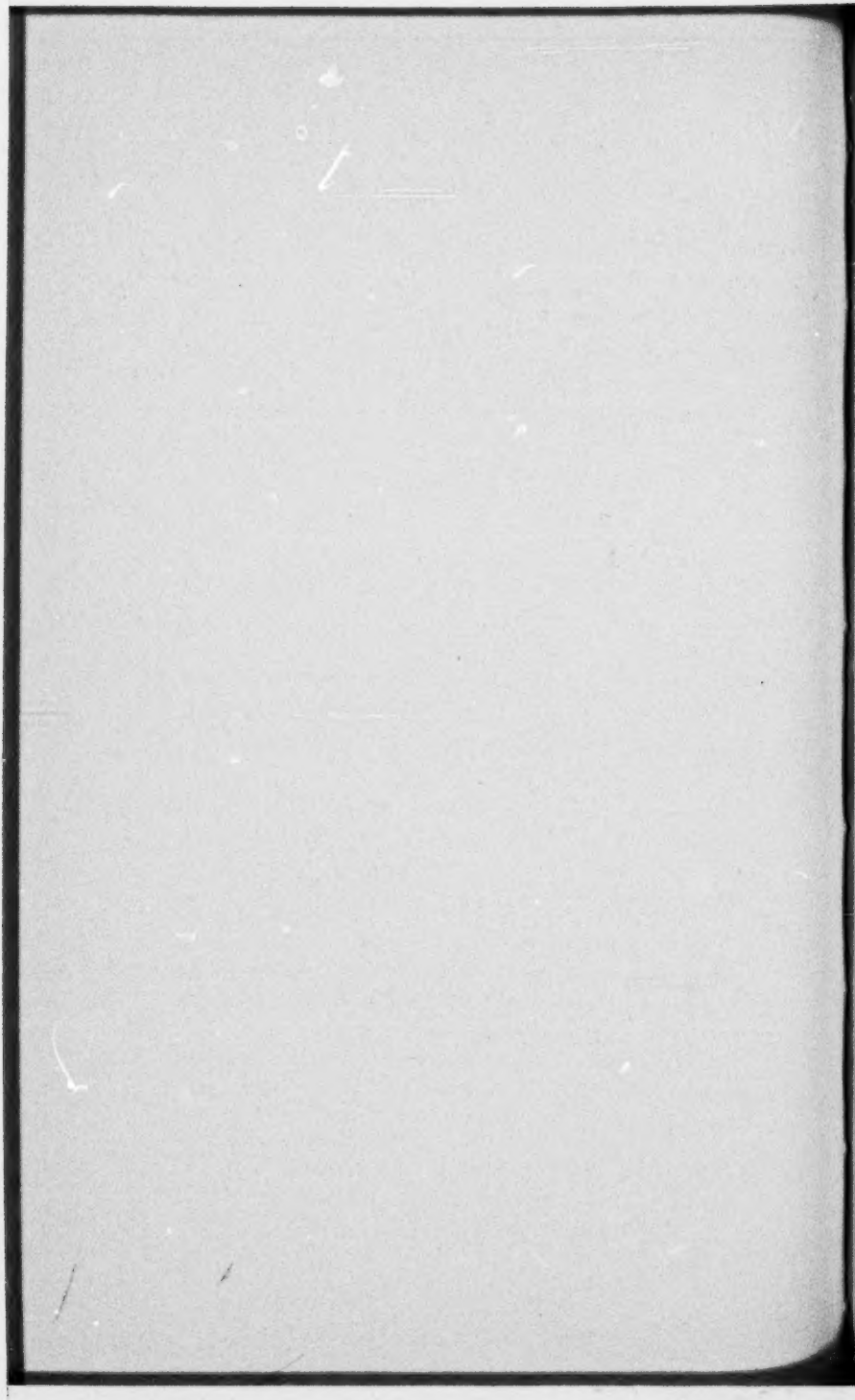
GEORGE L. WATT; WILLIAM WATT; ROLAND ULRICH; C. J. DEVISSER; MARIE DEVISSER, AND C. J. DEVISSER; C. J. DEVISSER, AS ADMR. W.W.A. OF EST. OF A. W. DEVISSER, DEC'D; FRED TRAUTWEIN; HARRY VAN GILDER; CHARLES ZACH; FRED INGRAHAM; CLYDE BACON, INC.; L. A. HARDY; FRED C. ROGERS; RUDY BONADIMAN; ALBERT ASSON; MARIO L. DALRY; ELZO R. CHUGG; CASPER G. BAGNELL; HERSHEL BARNES; ELMORE LOVELAND; WAYNE F. GARRARD; PARKER & SULLIVAN; D. F. PARKER & KEITH PARKER; J. S. PARKER; JACK F. CHURCH; A. R. McCUISTION; JAKE KERBS; C. C. CLARK; GUILIO MENAPACE; JOHN MARTSCH; JOHN WINN; VIVIAN WHIPPLE; ALVIN BROWN; MRS. MINNIE STEWART; ROBERT GIRARDELL; R. B. TURNER; HENRY MANNING; LELAND J. GARNER; OTTO JOHNSON; L. L. SPEVAK; W. G. SWIM, ADMR. OF EST. OF VIOLA FRIZELL, DEC'D; J. M. JAMERSON; HAROLD B. MALONE AND OLGA MALONE; D. C. PIERCE; EDWARD E. BABCOCK; HYPOTHEEK LAND COMPANY; AND FRED R. MATHERS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

L. DUNCAN LLOYD,
Chicago, Illinois,
WILLIAM R. WALLACE, JR.,
San Francisco, California,
Attorneys for Petitioners.

J. LOUIS EBERLE,
RICHARDS, HAGA AND EBERLE,
Boise, Idaho,
WILLIAM R. RAY,
WALLACE, GARRISON, NORTON & RAY,
San Francisco, California,
WILLIAM H. HILLIER,
LORD, BISSELL & KADYK,
Chicago, Illinois,
Of Counsel,



SUBJECT INDEX.

PAGE

Opinions Below 2

Jurisdiction 2

Questions Presented 3

Statutes Involved 3

Statement of the Case 4

Proceedings in the Court of Appeals and Prior Proceedings in this Court 4

The Issues Framed by the Pleadings 6

Jean's Warehouse at Filer, Idaho 7

Field Warehousing Operations of Banks at Filer 8

Jean's Warehouse at Rupert, Idaho 9

Banks Did Not Establish a Field Warehouse at Rupert, Idaho 10

The Claims of Respondents 10

Basis of the District Court's Decision 11

The License Question 11

Specification of Errors 15

Reason for Granting the Writ 16

The District Court Acted in Excess of Its Judicial Power When It Grounded Liability of Petitioners on Its Own Construction of a State Statute Which Was Directly Contrary to the State Court's Construction of the Same Statute and Refused to Be Bound by the State Court's Judgment Which Held Invalid the Very Same License Certificates Which Formed the Basis for the District Court's Decision 16

The District Court Grounded Its Decision on the Untenable Proposition That Banks' Application for the Licenses Made Banks the Warehouseman as to the Respondents at Both Warehouses as a Matter of Law 16

The License Certificates Could Not Create an Estoppel in Fact 18

The District Court Held the Original License Certificates Were Valid, Legal Licenses.. 19
Before the Trial of This Case in the District Court, the Original License Certificates Were Amended as of the Date of Their Original Issuance Pursuant to Orders of an Idaho State Court..... 20
The District Court Deliberately Overruled and Rejected the Idaho State Court Decision and Its Construction of the Idaho Statute 21
The District Court Acted in Excess of Its Judicial Power in Rejecting the Idaho State Court Decision. Also, It Violated Fundamental Principles Governing Federal-State Relationships 25
There Was No Valid Ground for the District Court to Refuse Full Faith and Credit to the Idaho State Court Decision..... 26
The Acts of the District Court in Excess of Its Judicial Powers and the Sanctioning of Such Acts by the Court of Appeals Are Such a Departure from the Usual Course of Judicial Proceedings as to Call for the Exercise of this Court's Powers of Supervision 28

Conclusion 29

Appendix:

Appendix A—The opinion, findings of fact, conclusions of law and judgment in the Idaho state court action..... 31
Appendix B—The Contract for Services..... 46
Appendix C—Sample copies of business forms used by W. Andrew Jean, doing business as Jean Seed Company (Scale tickets, memorandum receipt, crop settlement statement) 52
Appendix D—Idaho Bonded Warehouse Law.... 54

INDEX OF AUTHORITIES.

A. F. of L. v. Watson, 327 U. S. 582 (1946)..... 25

Barry v. Lawrence Warehouse Co. (C. A. 9, 1951), 190 F. (2d) 433..... 24

Brown County v. Atlantic Pipe Line Co. (C. C. A. 5, 1937), 91 F. (2d) 394, Certiorari Denied 302 U. S. 747 (1937)..... 27

Burford v. Sun Oil Co., 319 U. S. 315 (1943)..... 25

Chicago v. Fieldcrest Dairies, Inc., 316 U. S. 168 (1942) 25, 26

City of Chicago v. Gall, 195 Ill. App. 41 (1st Dist. 1915) (not reported in Northeastern Reporter).... 20

Cragin v. Powell, 128 U. S. 691 (1888)..... 27

Davis v. Davis, 305 U. S. 32 (1938)..... 22

Equitable Trust Company v. White Lumber Co. (D. C. Idaho, 1930), 41 F. (2d) 60..... 24

Erie Railroad Co. v. Tompkins, 304 U. S. 64 (1938).. 25

Heffron v. Bank of America (C. C. A. 9, 1940), 113 F. (2d) 239..... 24

Huron Holding Corp. v. Lincoln Mining Co., 312 U. S. 183 (1941)..... 22

Maxwell v. Twin Falls Canal Co., 49 Idaho 806, 292 P. 232 (1930)..... 18

Railroad Commission of Texas v. Pullman Company, 312 U. S. 496 (1941).....25, 26

Russell v. Maxwell Land Grant Co., 158 U. S. 253 (1895) 27

Security Warehousing Co. v. Hand, 206 U. S. 415 (1907) 24

Shipman v. DuPre, 339 U. S. 321 (1950)..... 25

Stanley v. Supervisors of Albany, 121 U. S. 535 (1887) 27

In re C. A. Taylor Log & Lumber Co. (D. C. Wash. 1925), 41 F. (2d) 249 24

Union Trust Co. v. Wilson, 198 U. S. 530 (1905) 24

Western Pacific Railroad Corporation v. Western Pacific Railroad Company, 345 U. S. 247 (1953) 2, 4, 5

CONSTITUTION AND STATUTES.

United States Constitution, Art. 4, Sec. 1 .....22, 28

United States Constitution, 10th Amendment 22, 28

28 U. S. C. Sec. 1254(1) 2

28 U. S. C. Sec. 1738 .....3, 22, 28

Idaho Bonded Warehouse Law, Idaho Code (1932), Sec. 67-201 to 67-235 .....3, 11, 19-22, 26, 28

Uniform Warehouse Receipts Act 24

TEXTS AND OTHER AUTHORITIES.

Birnbaum, Form and Substance in Field Warehousing, 13 Law and Contem. Prob. 579 (1948) 9

Comment, Res Judicata in Administrative Law, 49 Yale L. J. 1250 (1940) 27

Friedman, Field Warehousing, 42 Colum. L. Rev. 991 (1942) 9

Jacoby and Saulnier, Financing Inventory on Field Warehouse Receipts, National Bureau of Economic Research (1944) 9

Kane, The Theory of Field Warehousing, 12 Wash. L. Rev. 20 (1937) 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

NO. .....

WILLIAM H. BANKS WAREHOUSES, INC. AND JOHN ALFRED HALFORD,

Petitioners,

vs.

GEORGE L. WATT; WILLIAM WATT; ROLAND ULRICH; C. J. DEVISSER; MARIE DEVISSER, AND C. J. DEVISSER; C. J. DEVISSER, AS ADMR. W.W.A. OF EST. OF A. W. DEVISSER, DEC'D; FRED TRAUTWEIN; HARRY VAN GILDER; CHARLES ZACH; FRED INGRAHAM; CLYDE BACON, INC.; L. A. HARDY; FRED C. ROGERS; RUDY BONADIMAN; ALBERT ASSON; MARIO L. DALRY; ELZO R. CHUGG; CASPER G. BAGNELL; HERSHEL BARNES; ELMORE LOVELAND; WAYNE F. GARRARD; PARKER & SULLIVAN; D. F. PARKER & KEITH PARKER; J. S. PARKER; JACK F. CHURCH; A. R. McCUISTION; JAKE KERBS; C. C. CLARK; GUILIO MENAPACE; JOHN MARTSCH; JOHN WINN; VIVIAN WHIPPLE; ALVIN BROWN; MRS. MINNIE STEWART; ROBERT GIRARDELL; R. B. TURNER; HENRY MANNING; LELAND J. GARNER; OTTO JOHNSON; L. L. SPEVAK; W. G. SWIM, ADMR. OF EST. OF VIOLA FRIZELL, DEC'D; J. M. JAMERSON; HAROLD B. MALONE AND OLGA MALONE; D. C. PIERCE; EDWARD E. BABCOCK; HYPOTHEEK LAND COMPANY; AND FRED R. MATHERS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above entitled cause on May 15, 1952 (R. 679) and, to review that court's order of June 15, 1953 (R. 721) denying a petition for rehearing

after remand from this Court pursuant to this Court's order April 13, 1953 which vacated the Court of Appeals' earlier denial of a petition for rehearing *en banc* entered June 19, 1952 (R. 697).

OPINIONS BELOW.

The opinion of the United States District Court for the District of Idaho (R. 233-270) is reported in 96 F. Supp. 731. The opinion of the Court of Appeals (R. 678) is reported in 196 F. (2d) 1018. (The prior opinion of this Court appears at 345 U. S. 932 (1953).) The opinion of the Court of Appeals denying a rehearing (R. 722) is not yet reported.

JURISDICTION.

The Court of Appeals' judgment was entered May 15, 1952 (R. 679). Petition for rehearing was denied June 19, 1952 (R. 697). Petition for certiorari was filed in this Court on August 11, 1952. On April 13, 1953, this Court granted certiorari, vacated the order of the Court of Appeals denying petition for rehearing *en banc*, and remanded the case to the Court of Appeals for further proceedings in the light of *Western Pacific Railroad Corporation* v. *Western Pacific Railroad Company* (October term 1952 Nos. 150 and 160; 345 U. S. 247; R. 699-700). The Court of Appeals on May 27, 1953 adopted an amended rule concerning rehearings *en banc*. A supplemental petition for rehearing and memorandum suggesting reasons for granting rehearing *en banc* was filed by petitioners in the Court of Appeals on Friday, June 12, 1953 (R. 701-719). This supplemental petition was denied on Monday, June 15, 1953 (R. 721), with a *per curiam* opinion (R. 722). The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254 (1).

QUESTION PRESENTED.

When a state court of proper jurisdiction has found warehouse license certificates issued by the state Department of Agriculture to be incorrect and beyond the Department's power to issue under the state statute, and these license certificates have been amended and corrected as of the date of their original issuance by the Department, pursuant to a judgment and a writ of mandate of that state court in such action, does a federal court have judicial power under the Constitution to deny full faith and credit to the state court judgment, hold the state court judgment void, adopt a contrary construction of the statute and, as a matter of law, hold the licensee bound by the terms of the certificates as originally issued?

STATUTES INVOLVED.

The Idaho Bonded Warehouse Law, as it existed in 1946-1948, the period here in question, is printed in appendix D, p. 54.

28 U. S. C. Sec. 1738, after providing a method for authenticating judicial proceedings, states:

> "Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

STATEMENT OF THE CASE.

Proceedings in the Court of Appeals and Prior Proceedings in This Court.

Petitioners filed notice of appeal to the Court of Appeals for the Ninth Circuit on August 29, 1951. The court heard oral argument May 8, 1952 and handed down a *per curiam* opinion May 15, 1952, affirming the District Court's decision "on the grounds and for the reasons set forth in the District Court's opinion" (R. 679). Petition for rehearing (R. 681-695) was filed June 15, 1952, pointing out, among other things, that the decision created a conflict in the decisions of the Court of Appeals on the question of the legality of field warehousing. The petition was addressed to all the circuit judges and asked for a rehearing *en banc,* in view of this conflict and the importance of the question. The petition for rehearing was not passed on by all the judges, but only by the division which originally heard the case and it was denied on June 19, 1952 (R. 697).

Petition for certiorari was filed in this Court on August 11, 1952 (October Term 1952, No. 266). The petition was granted April 13, 1953 by a *per curiam* opinion, 345 U. S. 932 (1953). This Court vacated the order of the Court of Appeals denying a rehearing *en banc* and remanded the case to that court for further proceedings in light of *Western Pacific Railroad Corporation* v. *Western Pacific Railroad Company,* 345 U. S. 247, decided April 6, 1953 (R. 699-700).

On May 27, 1953 the Court of Appeals amended its rule 23 by adding two paragraphs thereto reading as follows:

"All petitions for rehearing shall be addressed to and

be determined by the court as constituted in the original hearing.

"Should a majority of the court as so constituted grant a rehearing and either from a suggestion of a party or upon its own motion be of the opinion that the case should be reheard *en banc*, they shall so inform the Chief Judge. The Chief Judge shall thereupon convene the active judges of the court and the court shall thereupon determine whether the case shall be reheard *en banc*."

Petitioners filed supplemental petition for rehearing and memorandum suggesting reasons for rehearing *en banc* on Friday, June 12, 1953 (R. 701-719). On Monday, June 15, 1953, the division of the Court of Appeals which originally heard the case denied the supplemental petition for rehearing and determined that, in its opinion, the case should not be reheard "*en banc* or otherwise" (R. 721-723).[1]

1. There is considerable doubt that the rule adopted by the Court of Appeals complies with the standards established by this Court in the *Western Pacific* case. At page 261 of 345 U. S., Mr. Chief Justice Vinson pointed out that the Court of Appeals could adopt a procedure whereby the responsibility for the initiation of the *en banc* power was delegated to a division of the court. But if such a procedure is adopted by general rule, Mr. Chief Justice Vinson was careful to point out there must be some means whereby the entire court can keep itself informed of the way in which its rule is actually operating. As he said: "And, recognizing the value of an efficient use of the *en banc* power, *the court should adopt such means as will enable its full membership to determine whether the court's administration of the power is achieving the full purpose of the statute* so that the court will better be able to change its *en banc* procedure, should it deem change advisable." (Emphasis added.)

Nothing in the revised rule 23 of the Court of Appeals for the Ninth Circuit provides a means whereby the entire court is in any way informed of the administration of its *en banc* power by its divisions except where the majority of a division votes to refer the *en banc* question to the whole court in a particular case. Surely knowledge of "the court's administration of the power" contemplates knowledge of cases where the division considered the exercise of the power inappropriate as well.

The Issues Framed by the Pleadings.

On July 6, 1948, petitioners, a field warehouse company and its warehouseman's liability insurers, filed a complaint for declaratory judgment (R. 3) in the United States District Court for the District of Idaho, asking for a finding and declaration that they were not liable to the respondents for produce which respondents had delivered to W. Andrew Jean, doing business as Jean Seed Company, a sole proprietorship (hereinafter called Jean) at the warehouse owned and operated by Jean at Filer, Idaho, or the warehouse owned and operated by him at Rupert, Idaho, and for a further declaration that Jean was not, at either place, the agent of petitioner William H. Banks Warehouses, Inc. (hereinafter called Banks). Jean was made a party defendant, but defaulted and the complaint was taken as confessed by him (R. 219, 221-222). Respondents are all bean growers in the vicinity of Filer or Rupert, Idaho, or owners of land on which such produce was grown. Answers and counterclaims were filed by two groups of respondents, stating that Jean was Banks' agent or that Banks was estopped to deny an agency (R. 40-76; 78-176). The third group of respondents denied they delivered their produce to Jean and alleged they delivered it to Banks (R. 29-39). The latter group of respondents

---

As Mr. Justice Frankfurter cogently observed (p. 272):

> "It may be proper to require petitions for rehearing *en banc* to be made to the panel in the first instance, but to allow the discretionary function under § 46(c) to be discharged definitively by the panel whose judgment may call for *en banc* action is to treat the statute as an empty, purposeless form of words."

The rule adopted by the Ninth Circuit, as is well illustrated by the summary treatment given the question in this case, leaves the statute as empty as Mr. Justice Frankfurter predicted it would be under such rule, which does not provide means enabling "• • • its (the court's) full membership to determine whether the court's administration of the power is achieving the full purpose of the statute • • •."

also filed suit against petitioners in an Idaho state court and this suit was removed to the District Court and consolidated for trial and judgment with the declaratory judgment action (R. 359, 415, 418, 487-488, 307-308).

Jean's Warehouse at Filer, Idaho.

Jean first acquired the warehouse building at Filer, Idaho, in 1943. He conducted a produce warehouse there from 1943 until April or May, 1948, receiving and weighing seed and commercial beans, and other produce; cleaning, weighing, buying and selling produce; and selling bags, twine, fertilizer and similar merchandise. He solicited business from local farmers including some of the respondents through "field men" (Finding VII, R. 313; Jean, R. 668-669; Jamerson, R. 652-653; Trout, R. 569; Moffatt, R. 542-543; Allison, R. 581-582; DeVisser, R. 617-618). He obtained a warehouse license under the Idaho Bonded Warehouse Law for the license year July 1, 1943—June 30, 1944, and another for July 1, 1944—June 30, 1945 (Stubblefield, R. 566). He did not obtain a license after July 1, 1945, but continued to conduct his business thereafter in exactly the same manner as he had done before. His assumed business name "Jean Seed Company" was registered under Idaho law (Ex. 31, R. 554).[2]

Many of the respondents who delivered their produce to the Filer warehouse had dealt with Jean for several years (*e. g.*, Jamerson, R. 652-653). All but three of the Filer respondents delivered the produce here in question to Jean at Filer in September and October of 1947 at the

2. By stipulation of counsel, the original exhibits have not been printed (R. 673-674). The record reference refers to the pages of the transcript where the exhibit was received in evidence. The exhibits pertinent to this petition for certiorari are set forth in the appendix to this brief or in the findings or other parts of the record referred to herein.

end of the harvest season.[3] All these respondents admitted they delivered their produce to "the Jean Seed Company Warehouse" where it was received by Jean or his employees (Summary, Ans. to Int., R. 442 at 447-449 and exhibits referred to therein; also Finding XXIX, R. 336 at 337-338). The Filer respondents received in return for their produce only "scale tickets" or "memorandum receipts," stating that the produce was received by Jean Seed Company. Some also received and accepted crop settlement statements, purchase orders and checks or notes of Jean (Ex 43-46; 92-94, 97, 98, 99, 101, 102, R. 590-591, 630-631, 653, 667; Summary, Ans. to Int., R. 442 at 447-449, 453-454).[4] Jean sold the beans of these Filer respondents before April 1, 1948, without any authorization from them and did not account to them for the proceeds of the sales (Complaint Count I, par. 18, R. 12; Default and Confession of Jean, R. 219, 221-222; Stip. R. 558).

Field Warehousing Operations of Banks at Filer.

Banks entered into a contract to perform a field warehouse service for Jean at Filer on September 21, 1946.[5] Field warehousing is essentially a security transaction carried on through the medium of warehousing. A warehouse is established by the field warehouse company on the borrower's premises and property of the borrower is delivered to and accepted by the field warehouse company, which then issues its own warehouse receipts on such property to the borrower or the borrower's creditor who,

3. The remaining three delivered their produce during the 1946 harvest season (Ex. 106, 95, 107, R. 667; Summary, Ans. to Int., R. 442 at 447-448; Finding XXIX, R. 336 at 337-338).

4. Sample copies of the scale tickets, memorandum receipts and crop settlement statements are set forth in appendix C hereto at p. 52; also at R. 453-454.

5. Ex. 1, R. 493, Finding IX, R. 315; set forth in appendix B p. 46.

in turn, holds the warehouse receipts in pledge as security for loans to the borrower.[6] In order to carry out the contract, Banks leased part of the premises from Jean, posted its own warehouse signs on the premises, accepted produce which Jean certified to be his own, issued its non-negotiable warehouse receipts on this produce and delivered them to various banks or other creditors of Jean in Idaho and elsewhere (Ex. 16, 17, R. 504-505; Finding VIII, R. 314-315; Ex. 2, R. 495; Kelley, R. 521, 532, 535-536; Moffatt, R. 537-538). None of respondents ever held any of Banks' warehouse receipts.[7]

Jean's Warehouse at Rupert, Idaho.

At Rupert, Idaho, Jean acquired a warehouse building in the spring of 1947 and opened for business in the summer of that year. He solicited depositors, advertised his business and accepted produce delivered there by the Rupert respondents (Finding XIX, R. 327; also Moffatt, R. 545; Simmons, R. 579; Coffman, R. 607-608; Finding XXVI, R. 332-334. Summary, Ans. to Int., R. 442 at 449-452). The Rupert respondents admit they delivered their produce to Jean and received in return only scale tickets or memorandum receipts showing the produce was received by Jean (Summary, Ans. to Int., R. 442 at 449-452,

6. Caris, R. 491-492. The nature and function of field warehousing is explained in Kane, *The Theory of Field Warehousing*, 12 Wash. L. Rev. 20 (1937); Birnbaum, *Form and Substance in Field Warehousing*, 13 Law and Contem. Prob., 579 (1948); Friedman, *Field Warehousing*, 42 Colum. Law Rev. 991 (1942); and in Jacoby and Saulnier, *Financing Inventory on Field Warehouse Receipts*, National Bureau of Economic Research, 1944. The authors of the latter work point out, p. 43, that in mid-1941 the aggregate bank loans secured by field warehouse receipts were estimated at $130,000,000.

7. All but two of Banks' receipts were returned or cancelled prior to July 1, 1947. The other two were issued thereafter and returned to Banks in March or early April of 1948 (Ex. 2, R. 495; Caris, R. 495; Branch, R. 505; Kelley, R. 521).

and exhibits referred to therein). Jean sold their produce prior to April 1, 1948, and did not account to them for the proceeds (Complaint, Count II, par. 14, R. 16; default and confession of Jean, R. 219, 221-222; Stip., R. 558). Jean never had or applied for a warehouse license at Rupert.

Banks Did Not Establish a Field Warehouse at Rupert, Idaho.

At one time, Jean thought he would need field warehouse services of Banks at Rupert and a lease was executed in anticipation of this need. However, he later changed his mind. Banks never entered into possession under the lease, never accepted any goods at Rupert or issued any warehouse receipts there and never did any acts there as a warehouseman or otherwise (Ex. 15, R. 504-505; Finding XIX, R. 327; Caris, R. 494-495; Branch, R. 505-507; Moffatt, R. 540-541). None of the Rupert respondents testified that they had knowledge of any acts of any kind performed by Banks at Rupert.

The Claims of Respondents.

In June, 1948, after it appeared that Jean was in financial difficulties, all the respondents made claim for the value of their produce against Banks (Complaint, Count I, par. 21, R. 12; Count II, par. 17, R. 16-17; Answers Watt, *et al.*, R. 34, 38; Ulrich, *et al.*, R. 45-46, 54-55; Ingraham, *et al.*, R. 83, 92-93). After investigating the claims, Banks denied liability and brought the declaratory judgment action in order to obtain judicial determination of the questions involved.

Basis of the District Court's Decision.

The issue framed by the pleadings, as previously stated, was whether or not Jean was Banks' agent, or whether or not the circumstances were such as to estop Banks from denying agency. The District Court, however, refused to make any finding on the agency question and stated in its opinion:

> "The question as to whether Jean was Banks' agent is not controlling here. The main question is: Was Banks the Warehouseman? This must be answered in the affirmative. Banks is liable whether or not Jean was its agent. The fact that the bean growers continued to deliver the beans to Jean at such warehouses is not material." (R. 269.)

The District Court based its judgment and opinion that Banks was the "Warehouseman" at each warehouse on certain warehouse licenses issued to Banks by the Idaho Department of Agriculture.

The License Question.

Before Banks started to do business in Idaho, its officials conferred with the Commissioner of Agriculture and fully explained the nature of its field warehousing operations. The Commissioner ruled that where Banks accepted agricultural produce for storage in one of its field warehouses, it was required to obtain a license for such warehouse under the Idaho Bonded Warehouse Law (Caris, R. 501-502; see also Idaho state court's findings, Ex. 32, R. 555; appendix A, p. 38). Accordingly, when Banks decided to operate a field warehouse in the warehouse at Filer in the fall of 1946, it applied for a license to do so on September 25, 1946. The license was issued September 27, 1946, and the license certificate stated, in words typed in by the Department, that

it was a "License to certify that William H. Banks Warehouses, Inc., may operate through State Warehouse 537" (Jean's Filer Warehouse) (Findings XI, XIII, R. 316, 319). This license expired June 30, 1947, but on June 24, 1947, Banks applied for a new license for the period July 1, 1947—June 30, 1948. Also, to be prepared for the field warehouse operations it contemplated at Rupert, Banks applied for another license on August 12, 1947. The applications were for licenses for Banks alone and did not mention Jean nor Jean's warehouses in any manner (Findings XVII and XXI, R. 323, 327). License certificates for the year July 1, 1947—June 30, 1948 were issued April 1, 1948, which was long after respondents had delivered their produce to Jean at the respective warehouses. There was no evidence that any of the respondents ever saw any of these license certificates. The license certificates were issued on the basis of the applications alone without any further action of Banks. Both 1947-1948 certificates stated Banks was licensed "to conduct the Jean Seed Company" (Findings XVIII and XXII, R. 325, 329). This language was inserted by the clerical error of an employee of the Idaho Department of Agriculture without the knowledge of Banks and contrary to the applications (Ex. 34, 32, R. 555, appendix A, pp. 35, 42). Banks requested the Department of Agriculture in June, 1948, to amend the 1947-1948 license certificates, deleting this language and substituting the words "William H. Banks Warehouses, Inc., warehouse." When the Department refused, on July 13, 1948, Banks instituted a petition for writ of mandate in an Idaho state court on July 20, 1948, to require the Department to make the amendments. The writ was granted and the amendments were made prior to the trial of the declaratory judgment action (Ex. 32-34, R. 555; Findings XXIII, XXIV,

R. 331, 332; appendix A, p. 31). The Idaho court stated in its opinion:

> "As written, the wording of neither license number 220 nor license number 217 makes sense. * * *
>
> "We have, then, two warehouse licenses erroneously worded and erroneously issued where the patent errors are refused correction by the defendant Department upon the advice and direction of the State Attorney General. * * *
>
> "Just how third parties can have a vested legal right in these errors, to prevent their correction, is beyond the imagination of this Court. * * *" (Ex. 34; appendix A, pp. 34, 35.)

The District Court, however, in finding petitioners liable, based its decision on the license certificates as they were before amendment and stated in its opinion:

> "* * * The bean growers had a right to rely on, and Banks is bound by, the licenses as they were before amendment." (R. 250.)

It also decided as a conclusion of law:

> "5. That the application made by Banks for a writ of mandate to the District Court of the Third Judicial District of the State of Idaho in and for the County of Ada and the issuance of the writ of mandate by said Court requiring the Commissioner of Agriculture of the State of Idaho to strike from Licenses No. 220 and 217 the words 'Jean Seed Company' and to substitute therefor the words 'Wm. H. Banks Warehouses, Inc., Warehouse', and said Commissioner's acts in changing said licenses to conform with said judgment could not and did not affect the rights of the defendants in Case No. 2587 and the plaintiffs in Case No. 2590, who were not made parties to said suit, *and that said Judgment is without any effect and is void as to the said defendants and said plaintiffs*" (R. 344, Emphasis added).

The Court's reliance on these original licenses, as fundamental to its whole opinion holding that Banks was conducting each warehouse, is further shown by its language at R. 250 where it speaks of "* * * the warehouses of Banks called the Jean Seed Company warehouse," R. 264, 265, 268 where it speaks of Banks operating the warehouses "* * * under the name of Jean Seed Company" and R. 267 where the Court states Banks had licenses to operate the warehouses in the name of Jean Seed Company.

SPECIFICATION OF ERRORS.

1. The Courts below acted in excess of their judicial power in holding petitioners bound by the terms of the warehouse license certificates as they existed before amendment, in holding the decision of the Idaho state court void, in substituting their own interpretation of the Idaho statute for that of the Idaho state court and in refusing to give full faith and credit to the state court decision.

2. The Courts below erred in holding, contrary to the Idaho state administrative practice and interpretation and contrary to the Idaho state court interpretation of the Idaho statutes, that field warehousing had no place under the statutes of Idaho.

3. The Courts below erred in their conclusions and holdings that, as a matter of law, Banks was the "warehouseman" at the Filer warehouse and at the Rupert warehouse because of its applications and license certificates.

4. The Courts below erred in their conclusions and holdings that petitioners were estopped to deny liability to respondents.

REASON FOR GRANTING THE WRIT.

The District Court Acted in Excess of Its Judicial Power When It Grounded Liability of Petitioners on Its Own Construction of a State Statute Which Was Directly Contrary to the State Court's Construction of the Same Statute and Refused to Be Bound by the State Court's Judgment Which Held Invalid the Very Same License Certificates Which Formed the Basis for the District Court's Decision.

Since the Court of Appeals affirmed the District Court's decision "on the grounds and for the reasons stated in the District Court's opinion" (R. 678), it is necessary to analyze that opinion to determine the actual basis of the decision. Such an analysis shows that the "grounds and reasons" set forth in the opinion are necessarily based on the District Court's denial of full faith and credit to an Idaho state court decision which held void the very license certificates on which the District Court grounded liability of Banks. At the same time, the District Court substituted its own construction of the Idaho statute for the construction previously adopted by the Idaho court. Both acts of the District Court were in excess of its judicial power.

The District Court Grounded Its Decision on the Untenable Proposition that Banks' Application for the Licenses Made Banks the Warehouseman as to the Respondents at Both Warehouses as a Matter of Law.

If liability is to attach to petitioners, it must be upon one or more of the following theories:

1. That Jean was the actual or apparent agent of

Banks at both warehouses, or that Banks was estopped to deny agency.

2. That Banks was the actual warehouseman at both warehouses or that Banks was estopped to deny it was the warehouseman.

3. That the license certificates issued to Banks made it the warehouseman as to the Respondents at both warehouses as a matter of law without regard to any estoppel.

Although the first theory was the one on which issues were framed by the pleadings, the District Court rejected it entirely and stated (R. 269):

> "The question as to whether Jean was Banks' agent is not controlling here. The main question is: Was Banks the Warehouseman? This must be answered in the affirmative. Banks is liable whether or not Jean was its agent. The fact that the bean growers continued to deliver the beans to Jean at such warehouses is not material."

The District Court did not find or state in its opinion that Banks was the actual warehouseman at each warehouse, as indeed it could not, because there was no evidence that any of the respondents actually dealt with Banks as a warehouseman, or in any other manner, and the testimony is undisputed that Banks never commenced warehouse or any other operations at Rupert. This leaves only the ground that Banks was estopped to deny it was the warehouseman at each warehouse or the ground that the license certificates issued to Banks made it the warehouseman as a matter of law without regard to any estoppel. As a matter of fact, the District Court jumbled both these theories together in holding petitioners liable, but when the Court's discussion of estoppel (R. 264-269) is properly analyzed, it will be seen that actually the Court held petitioners liable on the third theory alone.

The License Certificates Could Not Create an Estoppel in Fact.

It must be remembered that the licenses in question were applied for by Banks on June 24, 1947 (Filer) and August 12, 1947 (Rupert), but the license certificates were not issued until April 2, 1948 (Findings XVII, XXI, XVIII, XXII, R. 323, 327, 325, 329). Therefore, the license certificates cannot create any estoppel in fact because they could not have been observed by any of the respondents in the fall of 1947 when they delivered their produce to Jean at the warehouses. In addition, there was no evidence that any of the respondents ever saw or relied upon the license certificates. Furthermore, Banks did nothing at Rupert other than to obtain a written lease and apply for a license. There is no evidence that any of the respondents knew of either act. Under Idaho law, the lease was not notice to them, even though it was recorded. *Maxwell* v. *Twin Falls Canal Co.*, 49 Idaho 806, 292 P. 232 at 235 (1930). There is thus not a single thing which Banks did at Rupert which could create any estoppel in fact. Therefore, the entire estoppel at Rupert must be based on the language of the license certificate issued April 2, 1948.

The District Court made no distinction between Rupert and Filer. The basis of its decision at Filer must therefore be the same as the basis at Rupert—*i. e.*, an estoppel because of the legal effect of the language of the license certificate rather than estoppel by facts and circumstances.

The District Court Held the Original License Certificates Were Valid, Legal Licenses.

The District Court's reliance on the original license certificates necessarily involves a holding that the original license certificates issued April 2, 1948, were legal licenses—that is, that they were in a form which the Department of Agriculture had power and authority to issue—and that the application for such licenses, without more, created a warehouse relationship between Banks and respondents. Obviously, if the Idaho Department of Agriculture had no power to issue such certificates, the certificates in and of themselves could not have created any such legal relationship nor could the application for such licenses create such relationships.

By basing its estoppel grounds and reasons on the legal effect of the license certificates, the Court necessarily merged this ground with the third theory—the theory that the license certificates issued to Banks on April 2, 1948, made it the warehouseman at both warehouses as a matter of law, without regard to any estoppel in fact.

The third theory of liability—that the language of the license certificates alone made Banks liable—is the foundation for the District Court's discussion and analysis of the Idaho Bonded Warehouse Law (R. 251-264). Unless that law can be construed as giving the Department of Agriculture power to force one person (Banks) to accept authority over and responsibility for the business of another (Jean), by the mere application for a license without more, the statute cannot effect the relations between Banks and respondents because the evidence is uncontroverted that none of the respondents dealt with Banks as a ware-

houseman or in any other manner at either Filer or Rupert.[8] Further, the District Court refused to find any agency between Jean and Banks (R. 269). The District Court construed the statute as giving the Department power to issue a license to Banks "to conduct the Jean Seed Company" and held Banks legally bound by the terms of such a license by the mere act of applying for a license in its own name.

Having adopted the theory that the license certificates alone made Banks liable, the District Court, as above pointed out, necessarily had to and did decide that the certificates as originally issued April 2, 1948, were legal, correct certificates under the Idaho law. In so holding, however, the District Court exceeded its judicial power under the Constitution because it denied full faith and credit to the decision of the Idaho state court. It also construed an Idaho statute in a manner contrary to the construction adopted by the Idaho state court in connection with the very same licenses involved in this action.

Before the Trial of this Case in the District Court, the Original License Certificates Were Amended as of the Date of their Original Issuance Pursuant to Orders of an Idaho State Court.

When Banks first saw the license certificates, which stated it was licensed "to conduct the Jean Seed Company," it asked the Idaho Department of Agriculture to amend and correct them. When the Department refused, Banks instituted an action for a writ of mandate in an Idaho court against the Department to require an amend-

8. One who applies for a license is under no duty to exercise the privileges thereof—nor is the fact that he has a license to do a certain act evidence he has actually done such act. *City of Chicago* v. *Gall*, 195 Ill. App. 41 at 46 (1st District, 1915) (not reported in Northeastern Reporter).

ment of the license certificates. The Idaho court found and held the license certificates to be "erroneously worded and erroneously issued" and that the Department had no power or authority under the Idaho statute to issue such a license (Ex. 34, R. 555; appendix A, p. 34). It also found and held that the error was a clerical error of the Department, and not the fault of Banks, and that Banks had acted with due dispatch in requesting an amendment (Ex. 34, 32, Finding 14, R. 555; appendix A, pp. 35, 42). The erroneous language in the original certificates was contrary to the custom and practice of the Department (Ex. 32, 34, Finding 15, R. 555; appendix A, pp. 42, 35). The Idaho court ordered the Department to amend and correct the licenses as of their date of issuance, and this was done prior to the trial in the District Court (Ex. 36, 37, R. 555; Findings XXIII, XXIV, R. 331-332). The Idaho court gave full and fair consideration to all questions relating to the powers of the Department under the state statute and the erroneous wording of the original licenses, as its opinion shows (Ex. 34, R. 555; appendix A, p. 31).

The District Court Deliberately Overruled and Rejected the Idaho State Court Decision and its Construction of the Idaho Statute.

The District Court, in its opinion, carefully set forth and considered the original licenses and the amendments, as well as the proceedings in the Idaho state court (R. 236-250), and then held that respondents

> "* * * had a right to rely on and Banks is bound by, the licenses as they were before amendment" (R. 250).

It also stated, as a conclusion of law, that the Idaho court's judgment was void as to petitioners and respondents (R. 344). As above pointed out, the quoted statement is fundamental to the entire opinion of the District Court. It is ob-

vious that the District Judge thought the license question was fundamental and that he felt he had to dispose of the amended licenses before he could hold Banks bound by the language of the original licenses. He attacked this question first in his opinion and devoted fourteen pages (R. 236-250) to setting forth facts and argument which led to the statement last quoted.

By deliberately rejecting the Idaho court's judgment, the District Court acted in excess of its judicial powers under the full faith and credit clause of the Constitution.[9] The District Court also set at naught the state court's interpretation of its own state statutes, a field reserved to the states by the Tenth Amendment.

The flagrant manner in which the District Court deliberately overruled and rejected the Idaho state court's construction of the Idaho statute is further shown by the District Court's banishment of the field warehousing industry from the state of Idaho. The District Court's opinion (adopted by the Court of Appeals) stated (R. 263):

> "I again state that a field warehouse business has no place under the statutes of the State of Idaho."

This finding was a necessary corollary to the District Court's holding that the original license certificates issued by the Department were valid, legal licenses. If the District Court recognized the real nature of Banks' field warehousing business, it could not logically have held that the Idaho Department of Agriculture had power to grant a license to Banks which would automatically make Banks responsible for Jean's warehouse operations, because any field warehousing of Banks would be entirely separate from any warehouse operations which Jean might conduct. Field

9. United States Constitution, Art. 4, Sec. 1. Also, the District Court violated 28 U. S. C. Sec. 1738. *Huron Holding Corp.* v. *Lincoln Mining Co.*, 312 U. S. 183 (1941); *Davis* v. *Davis*, 305 U. S. 32 (1938).

warehousing by Banks could involve only Banks, Jean and persons or lending institutions desiring to lend money to Jean. This would obviously be entirely separate from any warehouse operation Jean might himself conduct with other parties, such as respondents.

The quoted statement of the District Court is in direct conflict with: (1) the established administrative practice of the Idaho Department of Agriculture; (2) the opinion and decision of the Idaho state court; and, (3) the decisions of other federal courts on the question of field warehousing.

(1) The Idaho Department of Agriculture, by adminstrative practice and interpretation, recognized field warehousing. It issued warehouse licenses to at least 2 other field warehouse companies besides Banks (Stubblefield, R. 567). Also, in the present case, Banks made a full disclosure to the Department of the nature of its business as a field warehouseman before applying for a license (Caris, R. 501-502; see also Idaho state court's findings Ex. 32, R. 555; appendix A, p. 38) and the Department made no claim the business as such was unlawful. Had the Department felt the business was unlawful, it would have refused to accept any application for a license from a field warehouseman. It appears clearly from the Idaho state court's findings and opinion that the language in the licenses as originally issued was put there by clerical error, and was contrary to Department custom and practice (Ex. 34, 32, Finding 15, R. 555; appendix A, pp. 35, 42).

(2) The District Court's banishment of field warehousing is also in conflict with the opinion and decision of the Idaho state court which considered the action for writ of mandate. The Idaho state court clearly understood Banks was a field warehousing company (Ex. 34, R. 555; appendix A, p. 32) and accepted such a business as a legal business under the Idaho statutes. No Idaho case, state or federal, nor any case from any other jurisdiction is cited by the District Court to support its quoted statement.

(3) The District Court's statement, above quoted, is in conflict with the decision of other federal courts with regard to field warehousing. No mention is made of the Uniform Warehouse Receipts Act, in effect in Idaho, which has been relied on by numerous Courts of Appeals, including the Court of Appeals for the Ninth Circuit to sustain the legality of field warehousing in other states, and even by the District Court for the District of Idaho to sustain the legality of field warehousing in Idaho. *Heffron* v. *Bank of America* (C. C. A. 9, 1940), 113 F. (2d) 239; *Barry* v. *Lawrence Warehouse Co.* (C. A. 9, 1951), 190 F. (2d) 433; *Equitable Trust Company* v. *White Lumber Co.* (D. C. Idaho, 1930), 41 F. (2d) 60; cf. *In re C. A. Taylor Log & Lumber Co.* (D. C. Wash., 1925), 41 F. (2d) 249.

Field warehousing has been recognized as a legitimate and useful business by this court in *Union Trust Co.* v. *Wilson,* 198 U. S. 530 (1905), and *Security Warehousing Co.* v. *Hand,* 206 U. S. 415 (1907). It serves a most useful function in enabling small businessmen to obtain credit on their inventories and at the same time provides safeguards for lenders such as state and national banks, R. F. C. and similar institutions. The principles of field warehousing are the basis for many of the operations of the Commodity Credit Corporation. Whether or not the business of field warehousing is to be forbidden in Idaho is a question of state policy. This court has repeatedly restrained Federal Courts from construing state statutes before state courts have spoken. In absence of a clear and explicit statutory or judicial declaration by the state that the business is unlawful, a United States District Court should either treat the business as lawful or proceed with the utmost caution and deference before hazarding such an unsupported conclusion as is here involved. But the District Court did neither. It committed a still more serious encroachment on the authority of the state. In the

face of the state administrative and judicial interpretations in this case, which recognized the business of field warehousing as lawful, the District Court, and the Court of Appeals which adopted its decision, acted in excess of their judicial powers when they declared the industry to be unlawful in Idaho.

The District Court Acted in Excess of Its Judicial Power in Rejecting the Idaho State Court Decision. Also, It Violated Fundamental Principles Governing Federal-State Relationships.

This Court has been careful to restrain the lower federal courts from such encroachment upon a state court's interpretation of its own state statute. In *Railroad Commission of Texas* v. *Pullman Company,* 312 U. S. 496 (1941) and again in *Chicago* v. *Fieldcrest Dairies, Inc.,* 316 U. S. 168 (1942), this Court reiterated the principle that questions relating to the interpretation of state statutes and the powers of state administrative officers acting thereunder should be decided in the first instance by state, not federal courts. The same principles have been applied in *Burford* v. *Sun Oil Co.,* 319 U. S. 315 (1943). See also *Shipman* v. *DuPre,* 339 U. S. 321 (1950), and *A. F. of L.* v. *Watson,* 327 U. S. 582 (1946). In *Erie Railroad Co.* v. *Tompkins,* 304 U. S. 64 (1938), this Court held that a federal court sitting in a diversity case was bound by the Constitution to follow state common law as set forth in state decisions. As these cases point out, no other course will insure the harmonious operation of our federal system.

The instant case presents a flagrant violation of these principles. Here the Idaho court held the license certificates of April 2, 1948, to be "erroneously worded and erroneously issued" and ordered them corrected. The licenses

were corrected. When faced with the *very same license certificates,* the District Court held the original, not the amended, license certificates to be valid and controlling ones—a clear denial of full faith and credit to the Idaho decision. Also, the District Court's opinion necessarily held the original license certificates were valid, legal licenses, within the power of the Idaho Department to issue under the Idaho statute. This was a flat rejection of the Idaho court's construction of the Idaho statute—that the Department had no power to issue such a certificate. If, as stated by Mr. Justice Frankfurter in *Pullman*[9a] and by Mr. Justice Douglas in *Fieldcrest,*[9b] a federal court should refrain from construing a state statute in the first instance, it must follow, *a fortiori,* that when a state court has construed the statute and defined the powers of state administrative officers acting thereunder, the federal court is bound by such construction and definition and exceeds its judicial power when it ignores such construction and definition and adopts a contrary one.

There Was No Valid Ground for the District Court to Refuse Full Faith and Credit to the Idaho State Court Decision.

The only ground the District Court suggested for denying full faith and credit to the Idaho decision was that respondents had some kind of an "interest" in the original licenses and should have been parties to the state court action. In fact, the District Court stated it was a "startling proceedings" that petitioner, Banks, should have instituted the state court action to amend the licenses (R. 249). Certainly, if *Pullman*[9a] and *Fieldcrest*[9b] have any present day application, an Idaho court was the proper, in fact the only, forum in which Banks could properly try the question

9a. 312 U. S. 496 (1941).
9b. 316 U. S. 168 (1942).

of whether the licenses were correct or within the Department's power to issue. To attempt to try this question in the District Court would also be to collaterally attack the administrative decision, a practice this court has forbidden.[10] Furthermore, the Idaho Commissioner of Agriculture in his official capacity, was a necessary party to any action to amend the licenses he issued and he could not properly be made a party before the District Court.

The Idaho state court considered the problem of whether any parties other than Banks (the licensee) and the Department (the issuer of the license) were necessary or proper in its action and stated:

> "• • • This question is purely one between the petitioner (Banks) and the defendant Department of Agriculture over such errors in the issuance of petitioner's warehouse licenses. The errors should have been corrected without putting petitioner to the costs and expense of this suit.
>
> "Just how third parties can have a vested legal right in these errors, to prevent their correction, is beyond the imagination of this Court." (Ex. 34, R. 555, appendix A, p. 35.)

If the Department of Agriculture had no power to issue the original licenses, they were void; if it did have power,

---

10. *Cragin* v. *Powell*, 128 U. S. 691 (1888); *Russell* v. *Maxwell Land Grant Co.*, 158 U. S. 253 (1895) (validity of land survey by government officers cannot be collaterally attacked in an action between private parties); *Brown County* v. *Atlantic Pipe Line Co.* (C. C. A. 5, 1937), 91 F. (2d) 394, certiorari denied 302 U. S. 747 (1937); *Stanley* v. *Supervisors of Albany*, 121 U. S. 535 (1887) (taxpayers cannot collaterally attack the validity of particular tax assessments). See also, Comment entitled *"Res Judicata in Administrative Law,"* 49 Yale L. J. 1250 (1940), where the author states, p. 1266:

> "The action of state licensing agencies has uniformly been held to be conclusive against collateral attacks. • • • No distinction has been made between errors of fact or of law in the mistaken refusal to grant the license."

they were valid;—but, in either event, the only necessary or proper parties to such a determination were Banks, the licensee, and the Department, the issuer of the licenses.[11]

The Acts of the District Court in Excess of Its Judicial Powers and the Sanctioning of Such Acts by the Court of Appeals Are Such a Departure from the Usual Course of Judicial Proceedings as to Call for the Exercise of this Court's Powers of Supervision.

The District Court directly overruled the decision of the Idaho court on the very license certificates involved in its own case; it concluded that the Idaho court judgment was void; and it completely disregarded the full faith and credit clause and Title 28 U. S. C. Sec. 1738. These acts of the District Court and the action of the Court of Appeals in sanctioning these proceedings, are such departures from the accepted and usual course of judicial proceedings under the full faith and credit clause, the Tenth Amendment and the decisions of this Court as to call for an exercise of this Court's power of supervision.

11. It should also be noted that the Idaho Bonded Warehouse Law (appendix D, p. 54) gives no rights to anyone other than the applicant to be heard on whether or not a license should be granted (sec. 67-206) or revoked (sec. 67-228).

CONCLUSION.

We respectfully submit that this petition for certiorari should be granted.

L. Duncan Lloyd,
Chicago, Illinois,

William R. Wallace, Jr.,
San Francisco, California,
Attorneys for Petitioners.

J. Louis Eberle,
Richards, Haga and Eberle,
Boise, Idaho,

William R. Ray,
Wallace, Garrison, Norton & Ray,
San Francisco, California,

William H. Hillier,
Lord, Bissell & Kadyk,
Chicago, Illinois,
Of Counsel.